

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Hon. Nancy G. Edmunds

-vs-

No. 10-CR-20403-NGE

D-5 DERRICK A. MILLER,

Sentencing Date: May 29, 2014

Defendant.

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**SENTENCING MEMORANDUM OF THE UNITED STATES  
AS TO DEFENDANT DERRICK A. MILLER**

The United States submits the following memorandum regarding the sentencing of defendant Derrick A. Miller on May 29, 2014.

Respectfully submitted,

BARBARA L. McQUADE  
United States Attorney

s/MARK CHUTKOW  
Assistant United States Attorney

s/R. MICHAEL BULLOTTA  
Assistant United States Attorney

s/JENNIFER L. BLACKWELL  
Assistant United States Attorney

s/ERIC DOEH  
Assistant United States Attorney

## **INTRODUCTION**

As a former high-level official in the administration of Detroit Mayor Kwame Kilpatrick, Derrick Miller participated in the corruption permeating city government at the time. He pleaded guilty to corruption and tax-related crimes and agreed to cooperate in the government's prosecution of the former mayor and his associates. During five days on the witness stand, Miller provided an insider's firsthand perspective to the jury of a city administration that had cast off its ethical moorings in the pursuit of personal gain. Miller should be punished for his own serious abuses of the public trust. But the significant evidence he offered the jury about the grave wrongdoing of others---corroborated by text messages, city records and other trial witnesses---warrants a significant downward departure from his guideline range of imprisonment, to a term of prison of not more than forty months.

## **ARGUMENT**

Title 18, United States Code, Section 3553(a) requires the Court to impose a sentence which is sufficient but not greater than necessary to comply with the purposes set forth in that section. In this memorandum, the government will summarize the statutory factors most applicable to Miller's case.

**A. The Nature and Circumstances of the Offense (18 U.S.C. § 3553(a)(1))**

Miller served as the city's chief administrative officer from 2002 to 2005. In this position, he acted as the mayor's liaison with other local, state and federal government agencies, and handled special projects crossing city department lines. From 2006 to 2007, Miller served as the city's chief information officer. He left city government in October 2007 to start his own government consulting firm.

In 2011, Miller pleaded guilty to violating Title 18, United States Code, Section 666(a), which prohibits local public officials from accepting money in exchange for official acts or influence. Miller admitted that from 2005 to 2007, he accepted \$115,000 in cash kickbacks from a real estate broker in connection with the lease or sale of city properties. Miller gave half of these kickbacks to Kilpatrick. At the time of the payments, Kilpatrick and Miller had authority and influence over the lease and sale of city properties.

Miller also pleaded guilty to violating Title 26, United States Code, Section 7206(1), which prohibits taxpayers from making false statements on their income tax returns. Miller failed to report on his 2007 tax returns \$46,725 of the cash kickbacks he received from the real estate broker. Miller also failed to report a \$568,000 consulting fee he received shortly after leaving city government from a company called Inheritance Capital Group (ICG) in part for introductions Miller

made while a city official to General Motors executives and city pension trustees in connection with ICG's purchase and leaseback of a portfolio of GM properties.

In the relevant conduct portion of his plea agreement, Miller admitted to engaging in other misconduct while serving in public office. In 2003 and 2004, while he was the city's chief administrative officer, he twice received \$10,000 in cash from Karl Kado, owner of Metro Services Organization (MSO), for Miller's assistance to MSO in obtaining and keeping contracts for electrical and cleaning services at Cobo Civic Center. At Kilpatrick's direction, Miller also delivered between \$10,000 and \$20,000 cash from Kado to Kilpatrick.

In 2006 and 2007, while Miller was the city's chief information officer, he authorized public funds to be paid to a company set up by businessman Andrew Park to install security cameras and television screens throughout the city to detect and alert the public about potential threats of harm. Miller steered the money to a company Park incorporated specifically for the purpose of receiving those funds called Security Communications Alert Network (SCAN). Miller later received more than \$10,000 from Park in part because of Miller's assistance in obtaining the funding. At Kilpatrick's direction, Miller obtained an additional \$10,000 cash from Park, which Miller gave to Kilpatrick in a restaurant bathroom.

Miller failed to monitor SCAN's work to ensure that the public funding Miller continued to authorize for SCAN was appropriate and justified. In late 2006, Miller learned that SCAN had improperly diverted a portion of the public funds (in actuality a total of \$750,000) to Park's unrelated Asian Village restaurant development. In an attempt to alleviate Park's financial problems and get the diverted funds back to SCAN, Miller put in a good word for Asian Village with Kilpatrick's representatives on the city pension board, Jeffrey Beasley and DeDan Milton, who helped Asian Village secure a \$2.75 million loan from the city's general retirement system in May 2007.

Miller had discussions with Park and his business partner about joining their restaurant and security businesses after Miller left city employment. These proposals did not come to fruition, however, so Miller ultimately did not personally profit from the public funding of SCAN, other than the kickbacks he received. But Miller continued to approve funding to SCAN---despite knowing of its financial problems and its failure to complete its work---in part because he had been compromised by his improper financial dealings with Park. SCAN eventually failed to deliver any security system to the city, resulting in \$4.4 million in losses to the city and the federal government. Park's other company, Asian Village, also defaulted on its loan repayment obligations to the city pension fund.

**B. Miller's History and Characteristics (18 U.S.C. § 3553(a)(1))**

At one time, Miller was near the top of city government with significant influence over public policy in this region. As chief administrative officer of the City of Detroit, he was a member of Mayor Kilpatrick's inner circle. He had been Kilpatrick's friend since their days at Cass Tech high school. Miller stood next to his friend at nearly every step of Kilpatrick's political ascent from teacher, to Democratic Leader of the Michigan House of Representatives, to Mayor of Detroit.

From all accounts, as chief administrative officer of the city, Miller enjoyed a productive relationship with many in the business community who appreciated his ideas for economic development. Eventually, he was pushed out of Kilpatrick's inner circle after voicing increasing concerns about the mayor's close relationship with Bobby Ferguson, a city contractor, as well as Ferguson's use of that relationship to bully other city contractors, which Miller thought was hurting the mayor and the city. With Miller out of the picture, Ferguson gained ever more influence with the mayor, with disastrous results.

Miller accepted responsibility for the misconduct uncovered by the government and admitted other misconduct previously unknown to the

government. Since pleading guilty, Miller appears remorseful about his ethical lapses, recognizing that he did not live up to his obligations as a public servant.

**C. Seriousness of Miller's Crimes, Just Punishment and Respect for the Law**  
**(18 U.S.C. § 3553(a)(2)(A))**

Miller's offenses are serious. As a city official, he knew he could not accept money in exchange for his official assistance. He violated his position of public trust by putting his own financial enrichment ahead of the interests of the citizens of the city. For example, partly because of Miller's improper financial dealings with Andrew Park, Miller continued to authorize payments of public funds to SCAN for a security system that was never implemented. Accordingly, there is a need for a sentence that is sufficient to punish Miller for his misconduct and to instill public confidence in the rule of law.

**D. Deterring the Criminal Conduct of Others** (18 U.S.C. § 3553(a)(2)(B))

Given the potential financial rewards, other public servants and municipal contractors may be tempted to engage in behavior similar to Miller's. Imposing a prison sentence for Miller serves the important purpose of deterring others from engaging in similar misconduct. General deterrence has its greatest impact in white-collar cases, like this one, because these crimes are committed in a more

rational and calculated manner than sudden crimes of passion or opportunity.

*United States v. Peppel*, 707 F.3d 627, 637 (6th Cir. 2013).

**E. Protecting the Public from Further Crimes (18 U.S.C. § 3553(a)(2)(C))**

Miller has shown an appreciation of the gravity of his crimes. This was demonstrated by his willingness to cooperate in the prosecution of others for similar wrongdoing. His contrition gives some confidence that he will not commit new crimes if given the chance to do so.

**F. Sentences Contemplated by the Sentencing Guidelines (18 U.S.C. § 3553(a)(4)(A), (b)(1) & (c))**

The government concurs with the findings and calculations contained in the presentence investigation report. The probation office correctly assessed Miller two points for accepting more than one bribe (e.g., the kickbacks from the real estate broker, Karl Kado, and Andrew Park). U.S.S.G. § 2C1.1(b)(1). Miller---who served as the city's chief administrative officer and chief information officer during the commission of his crimes---also should be assessed four levels for serving as a public official in a high-level decision-making position at the time of his crimes. *Id.* at §§ 2C1.1(b)(3) and 2C1.1., App. Note 1.

Finally, the probation office properly assessed Miller 18 levels because his crimes caused over \$2.5 million in losses. *Id.* at §§ 2C1.1(b)(2) & 2B1.1(b)(1). Part

of these losses come from the \$4.4 million of city and federal funding that was squandered by Andrew Park's mismanagement of funds earmarked for a security system for the city. Miller encouraged Park to seek these funds, then helped steer the money to a company Park created for that purpose, SCAN, without competitive bids. Thereafter, Miller---compromised by his improper financial relationship with Park---personally approved continued payments to SCAN despite SCAN's failure to complete work justifying such funding. Although Miller did not personally profit from the \$4.4 million in losses (aside from his cash kickbacks), he reasonably should have known or foreseen the pecuniary harm to the government under the circumstances. *See* U.S.S.G. §§ 2C1.1(b)(2) (assessing responsibility for the benefit received from the payment or the loss to the government from the offense, *whichever is greatest*); 2B1.1, App. Note 3(A)(iv) (defining "reasonably foreseeable pecuniary harm").

Based on these assessments, Miller's guideline range of imprisonment is 120 months, the statutory maximum for his offense.

#### **G. Motion for Downward Departure for Substantial Assistance**

The government moves for a downward departure from Miller's 120-month guideline range of imprisonment because of his extraordinary assistance in the prosecution of a public corruption case of historic importance to this region. His

truthful, accurate and well-corroborated testimony provided very significant evidence of the guilt of his codefendants, Kwame Kilpatrick and Bobby Ferguson, as well as Miller's own complicity in their wrongdoing. For this he deserves substantial leniency.

The Court is well aware how difficult it is to investigate and prove public corruption cases. Frequently, as here, corruption involves clandestine exchanges of money between two persons behind closed doors. To bring culprits to account, the government usually needs the assistance of cooperators, most of whom have their own degree of culpability. It is rare that an innocent bystander will witness or know about a bribe transaction.

Miller was just such a cooperator. In fact, he was more than an ordinary cooperator: he was a hand-picked member of a corrupt mayor's inner circle. Kilpatrick was notoriously close-to-the-vest with all but his most trusted associates. He was paranoid that law enforcement officials were listening in on his conversations. He was extremely guarded on the phone. He had his office routinely swept for bugs. He kept secrets and compartmentalized his corrupt endeavors so no one associate (except perhaps Ferguson) knew too much.

As the only true insider on the government's witness list, Miller gave the jury a firsthand perspective of the illicit objectives and motivations of Kilpatrick

and his associates. He provided the narrative glue for oftentimes cryptic, episodic and fragmented evidence presented in text messages and city records over the course of a six month trial. He corroborated and contextualized the testimony of numerous witnesses who were victimized by the Kilpatrick enterprise without necessarily knowing the underlying motivations for it. It was no accident that Miller's testimony came near the end of the government's case, after the jury had already heard evidence supporting most of the allegations.

And it was no easy matter for Miller to cooperate in the government's prosecution of his longtime friend, Kilpatrick. Their friendship began as teenagers and continued throughout most of their adult lives. Kilpatrick was the best man in Miller's wedding. Miller served as an aide to Kilpatrick's mother, U.S. congresswoman Carolyn Cheeks-Kilpatrick. He was an integral member of Kilpatrick's campaign for the Michigan House of Representatives. After Kilpatrick's election, Miller served as Kilpatrick's deputy chief of staff. The two traveled together throughout the State to build support for Kilpatrick's appointment as Democratic floor leader of the State House. Miller became a key member of Kilpatrick's campaign for mayor of Detroit. After Kilpatrick's election as mayor, Miller became his chief administrative officer. In sum, Miller's career

was centered almost entirely on advancing the interests, ambitions and vision of one man---Kwame Kilpatrick.

Miller's decision to cooperate with the government took a substantial personal toll on him. He testified for five days, enduring three days of withering cross-examination challenging his loyalty to Kilpatrick, his marriage, even his religious faith. Miller attempted to ignore the personal attacks by focusing on the evidence, which he delivered in a calm, precise, matter-of-fact manner. When questioned by both the defense and the prosecution, Miller repeatedly acknowledged his complicity in wrongdoing. The vast majority of his testimony about the wrongdoing of Kilpatrick and Ferguson was corroborated by other evidence given to the jury from text messages, city records and other witnesses.

No other witness touched on so many aspects of the government's case as did Miller. To give a sense of the breadth and importance of Miller's testimony, the next three sections summarize what he told the jury about three key aspects of the government's case: fraud, bribery, and extortion.

### **1. Miller's Testimony Regarding Fraud**

As a member of the Michigan House of Representatives, Kilpatrick secured a half-million dollar grant from a state arts fund for a non-profit set up by Ferguson and another \$350,000 for Kilpatrick's pastor. Portions of both grants

were redirected to Kilpatrick's wife and Ferguson misspent much of the rest of his grant on refurbishing his corporate offices. Miller corroborated that these funds were misused, describing how Kilpatrick became upset when the State budget office (SBO) started requesting documentation about the grants, how Kilpatrick did not want the SBO to get his pastor's receipts, and how Kilpatrick did not want the SBO to know that Kilpatrick's wife was a beneficiary of a portion of the grants.

After he became mayor, Kilpatrick began misappropriating funds from other non-profits, including the Kilpatrick Civic Fund. Miller provided evidence that contradicted the defense theory that Kilpatrick was a mere figurehead of the fund. Miller testified that Kilpatrick was the fund's creator, was well versed in the rules governing non-profit social welfare organizations, and controlled the civic fund's operations, including its checkbook. Miller testified about how Kilpatrick lied to the public when he emphatically declared in a televised mayoral debate that he had not used "one penny" of the civic fund for his campaign. Miller testified that the civic fund in fact paid for numerous campaign expenses. He added that when Kilpatrick prepared for the televised debate, Kilpatrick acknowledged that the "not one penny" comment was false but he figured no one would be able to disprove it because the civic fund had not publicly disclosed its donors or expenses.

Finally, Miller testified that Kilpatrick did not hesitate to cover up other improper uses of the civic fund when caught. For example, Miller corroborated Kilpatrick's communications director, Matt Allen, about Kilpatrick's false and shifting public explanations for why the civic fund paid over \$8,000 for Kilpatrick and his family to vacation at the La Costa Resort outside San Diego.

## **2. Miller's Testimony Regarding Bribery**

Miller also corroborated that when Kilpatrick was mayor, Kilpatrick took bribes from local vendors who wanted city business. Miller told the jury that during Kilpatrick's first term, Kilpatrick directed Miller to meet with businessman Karl Kado on two occasions to pick up between \$5,000 and \$10,000 cash from Kado, which Miller delivered to Kilpatrick to protect Kado's cleaning and electrical contracts at the Cobo Civic Center. Miller testified that he also delivered \$10,000 cash from Kado to Kilpatrick in late 2001, when Kilpatrick was running for mayor.

In addition, Miller told the jury that between 2003 and 2007, he gave Kilpatrick about \$50,000 in cash kickbacks that Miller received from a real estate broker who did business with the city. Finally, Miller testified that near the end of Kilpatrick's time in office, Miller met Kilpatrick in a restaurant bathroom to give him a \$10,000 cash kickback from Andrew Park, a businessman who received funds from the city and its pension funds.

### **3. Miller's Testimony Regarding Extortion**

Perhaps the most important evidence Miller provided was regarding the RICO extortion conspiracy involving Kilpatrick, Ferguson and Bernard Kilpatrick. Miller told the jury about "sit down" meetings of these men to discuss business opportunities and political strategy. Miller testified that Kilpatrick said that Ferguson needed to be part of city contracts. He explained that over time, Ferguson had more power and influence within the administration than Miller did.

Miller corroborated other evidence the jury heard that shortly after Kilpatrick became mayor, he held hostage a multimillion dollar contract to fix aging sewers beneath the city until Inland Waters, the company awarded the contract, agreed to Kilpatrick's demand to dump its minority subcontractor for Ferguson. Miller testified that Ferguson talked about his interest in the contract in discussions with Miller and Kilpatrick, and that Kilpatrick also wanted Ferguson on the contract. At Kilpatrick's direction, Miller met with Inland executive Kathleen McCann while the contract was on hold to inquire about replacing its minority subcontractor with Ferguson.

Miller also supported evidence the jury heard about a Detroit-based minority-owned construction company, Lakeshore Engineering, which had its

contract for sewer repairs canceled after it declined to give Ferguson 25% of the deal. Miller confirmed that Ferguson wanted the contract canceled so Kilpatrick directed Miller to tell DWSD Director Victor Mercado to cancel it. The work was given instead to Inland Waters, the company that previously had agreed to play ball with Ferguson by dumping its minority partner for Ferguson.

Miller also provided significant evidence about improper pressure the administration applied on Detroit-headquartered construction firm Walbridge Aldinger, which had submitted the lowest equalized bid to construct the Baby Creek combined sewer overflow facility. Miller testified that after the bids were opened, Kilpatrick directed Miller to tell Walbridge official Bernard Parker III that Walbridge needed to put Ferguson in the deal. Miller also described how, at Ferguson's request, Miller provided inside information about the bids to Ferguson to help him leverage his position with Walbridge during contract negotiations.

Miller corroborated evidence about another extortion of Inland Waters involving repairs of a huge sewer collapse in Sterling Heights. Miller testified that Ferguson wanted more money from Inland for work at the sewer collapse, and that Kilpatrick would not release a contract amendment to pay Inland until Ferguson was paid. After several months of stalemate, Miller personally

intervened in the matter, causing Inland to resolve its dispute with Ferguson.

Only then did Kilpatrick authorize Inland's amended contract with DWSD.

**H. Avoiding Sentencing Disparities Among Similarly Situated Defendants**  
**(18 U.S.C. § 3553(a)(6))**

In considering an appropriate sentence for Miller, the Court must seek to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar crimes. Ordinarily, the Court must look nationwide for such comparable defendants because subsection 3553(a)(6) "is concerned with national disparities among the many defendants with similar criminal backgrounds convicted of similar criminal conduct." *United States v. Benson*, 591 F.3d 491, 505 (6th Cir. 2010). The Court's careful review of the guideline range "necessarily [gives] significant weight and consideration to the need to avoid unwarranted disparities." *Gall v. United States*, 552 U.S. 38, 54 (2007).

But it also is helpful to look at defendants prosecuted in the government's recent effort to address local corruption in this region. First, there are Miller's codefendants. Kilpatrick and Ferguson were sentenced to 28 years and 21 years imprisonment, respectively, but their crimes were far more serious and wide-ranging than Miller's, and neither accepted responsibility nor cooperated.

Kilpatrick's father, Bernard Kilpatrick, was sentenced to 15 months imprisonment, but unlike Miller, Bernard Kilpatrick was not convicted of a corruption-related offense, but only a single tax crime. DWSD Director Victor Mercado, who pleaded guilty to aiding and abetting Kilpatrick's and Ferguson's extortions, was sentenced to 8 months in a residential reentry program, but as the Court noted, he was pressured and manipulated by Kilpatrick to help Ferguson and he did not financially benefit from his misconduct.

It also is worthwhile considering the sentences of some of the other defendants who participated in the pay-to-play culture of the Kilpatrick years. Kilpatrick's executive assistant, DeDan Milton, was sentenced to 42 months imprisonment for accepting a \$16,000 bribe to assist in the sale of Camp Brighton. No. 09-CR-20559 (E.D. Mich.). Detroit city council member Monica Conyers was sentenced to 37 months imprisonment and resignation of her office for accepting \$16,000 in bribes for her vote on the Synagro sludge deal. No. 09-CR-20025 (E.D. Mich.). Rayford Jackson, the consultant who bribed Conyers, was sentenced to 60 months in prison. *Id.*

Of further note are defendants, like Miller, who testified in the RICO corruption trial. These include Jon Rutherford, the homeless shelter operator who was sentenced to 21 months imprisonment after pleading guilty to failing to

report on his tax returns grant money he diverted to his property management company. Jim Rosendall, a Synagro executive, pleaded guilty to conspiring in some of Jackson's bribes to Conyers, and received an 11 month prison sentence for his extensive cooperation, which included lengthy undercover work wearing body wires and recording telephone calls. Emma Bell, Kilpatrick's former fundraiser and a key witness in the RICO trial, received 2 years probation after pleading guilty to tax crimes for failing to report her fundraising commissions from Kilpatrick. No. CR-11-20587 (E.D. Mich.).

Finally, there are the sentences of members of the Kilpatrick administration who cooperated in other corruption cases brought by the government. These include Kandia Milton, Kilpatrick's city council liaison, who pleaded guilty to accepting \$19,000 in bribes in connection with the sale of Camp Brighton, and was sentenced to 14 months in prison for providing extensive cooperation in other matters. No. 09-CR-20559 (E.D. Mich.). Efstathios Louis Pavledes, Kilpatrick's Cobo Civic Center director, was sentenced to 14 months imprisonment after cooperating with the government following his guilty plea to structuring in order to evade reporting cash kickbacks from a contractor. No. 08-CR-20415 (E.D. Mich.). Glenn Blanton, who succeeded Pavledes as Cobo director, received a 12 month prison sentence after he cooperated, including wearing a body wire,

following his guilty plea to obstructing the government's investigation of \$15,000 in bribes Blanton took from a contractor. No. 08-CR-20474 (E.D. Mich.).

While helpful, the sentences of these defendants are not entirely comparable to Miller's case, though. Miller's crimes were more serious than those of any of the other defendants, above, except for the crimes of Kilpatrick and Ferguson. But Miller's cooperation, while not involving undercover work, included extensive debriefings and five days of trial testimony, and surpassed the cooperation of any of the defendants above. In light of these other sentences, a sentence of imprisonment of not more than 40 months for Miller is reasonable and appropriate under the circumstances.

**CONCLUSION**

Based on the foregoing, the government recommends that the Court grant the government's motion for a downward departure from the Sentencing Guidelines based on Miller's substantial assistance, and sentence Miller to a term of prison of not more than 40 months, along with a monetary fine and three years of supervised release.

Respectfully submitted,  
BARBARA L. McQUADE  
United States Attorney

s/MARK CHUTKOW  
Assistant United States Attorney

s/R. MICHAEL BULLOTTA  
Assistant United States Attorney

s/JENNIFER L. BLACKWELL  
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s/ERIC DOEH  
Assistant United States Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on May 23, 2014, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

Byron Pitts  
*Attorney for Derrick A. Miller*

s/MARK CHUTKOW  
Assistant U. S. Attorney

Dated: May 23, 2014